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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DAVID UPDIKE, on behalf of himself, and
for all others similarly situated,

PLAINTIFFS,

v.

CLACKAMAS COUNTY,

DEFENDANT.

Case No. 3:15-cv-00723-SI

PLAINTIFF'S RESPONSE TO CORIZON'S
MOTION FOR PROTECTIVE ORDER

ORAL ARGUMENT REQUESTED

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RESPONSE TO MOTION FOR PROTECTIVE ORDER

Corizon's motion should be denied. As demonstrated below, Corizon has unduly delayed filing this motion for protective order. Corizon lacks standing to intervene in this litigation as it is not a named defendant. Most of Corizon's assumptions about this litigation are incorrect.

RESPONSE TO PROCEDURAL HISTORY

Corizon's first misstatement is that this lawsuit only concerns Defendant Clackamas County's failure to provide an American Sign Language (ASL) interpreter. Although that is one of the allegations, Plaintiff also complained of the denial of other auxiliary aides, including a working TTY/TTD, equal access to programs and services, including medical care, and failure by the County to assess him for accommodations.

Corizon is Clackamas County's subcontractor for providing medical care. Clackamas County cannot contract out its obligations under Title II of the ADA and the Rehabilitation Act of 1973. The changes sought in the proposed Second Amended Complaint to reflect the fact that there is one defendant, Clackamas County, rather than two defendants, refers to allegations against Craig Roberts, who the Court previously dismissed as a defendant. The proposed Second Amended Complaint does not contain claims directed against Corizon or its individual employees on the basis of negligence or on the basis of any other theory. However, Defendant Clackamas County should be responsible for making sure that its subcontractor complies with the law and provides deaf inmates with ASL interrupters and other auxiliary aides.

RESPONSE TO POINTS AND AUTHORITIES

None of the cases cited by Corizon stand for the proposition that a non-party can sit on its hands and file a last-minute motion. In this case, on May 26, 2016, Corizon was served with a Notices of Deposition for Monique Graves, Nadia Petrov, Dustin Baldwin, Mark Farrell, Corrin Rowe, and Sharon Brennan because Corizon's attorney, Anne Talcott, refused to confer and schedule depositions. Defense counsel had copies of the subpoenas by June 3, 2016. The depositions of these employees are set for June 22, 2016. If Corizon thought it had a basis for

moving for a protective order, it is unreasonable for Corizon to wait until June 16, 2016, to move for a protective order. In this case, every employee who was served received the subpoena on either June 6 or 8, 2016. That is a reasonable time to receive service of process before a June 22, 2016 deposition.

A. Deposition of Corizon Employee Monique Graves.

On June 8, 2016, a subpoena was served on Ms. Graves. See Exhibit J, Declaration of Daniel Snyder (Snyder Decl.) submitted in support of Plaintiff's Response to Defendant Clackamas County's Motions for Protective Order.

B. Deposition of Corizon Employee Nadia Petrov, RN.

On June 8, 2016, a subpoena was served on Ms. Petrov. See Exhibit L, Snyder Decl. submitted in support of Plaintiff's Response to Defendant Clackamas County's Motions for Protective Order.

C. Deposition of Corizon Employee Dustin Baldwin.

On June 6, 2016, a subpoena was served on Mr. Baldwin. See Exhibit N, Snyder Decl. submitted in support of Plaintiff's Response to Defendant Clackamas County's Motions for Protective Order.

On Wednesday, June 17, 2016, Corizon's attorney Nathan D. Sramek called to confer on a motion to quash. Corizon's attorney admitted that Corizon has had copies of the depositions of all Corizon employees since June 3, 2016. The attorney did not mention that Mr. Baldwin's court appearance would be interfered with by a planned vacation. See Snyder Decl, ¶9. The attorney did not suggest that Mr. Baldwin's deposition be taken at a more convenient time as Clackamas County did with respect to the deposition of Ms. Feaver.

D. Deposition of Corizon Employee Mark Farrell.

Mark Farrell has not been served with a subpoena. According to the process server, neighbors reported that Mr. Farrell has been out of town.

E. Deposition of Corizon Employee Corrin Rowe.

Ms. Rowe has not been served with a subpoena. According to the process server, Ms. Rowe has been avoiding service of process. She has not been served with a subpoena.

F. Deposition of Corizon Employee Sharon Brennan.

On June 6, 2016, a subpoena was served on Ms. Brennan. See Exhibit R, Snyder Decl. submitted in support of Plaintiff's Response to Defendant Clackamas County's Motions for Protective Order.

Corizon is not a party to this litigation and thus lacks standing to seek a protective order on behalf of other third parties, i.e. Monique Graves, Nadia Petrov, Dustin Baldwin, Mark Farrell, Corrin Rowe, and Sharon Brennan. *Salem Vegas, L.P. v. Guanci*, No. 2:12-cv-01892-GMN-CWH, 2013 U.S. Dist. LEXIS 141619 (D. Nev. Sep. 30, 2013) (holding that nonparties lack standing to quash subpoenas against other nonparties); *see also Rhodes v. Litig. Trust of the Rhodes Cos., LLC (In re Rhodes Cos., LLC)*, No. 2:11-CV-01705-PMP-GWF, 2012 U.S. Dist. LEXIS 59918 (D. Nev. Apr. 30, 2012); *Leanders v. Yassai (In re Yassai)*, 225 B.R. 478 (Bankr. C.D. Cal. 1998).

Furthermore, Corizon has not shown any specific harm by allowing its employees to be deposed. In order to establish good cause for issuance of a protective order, the party seeking protection bears the burden of showing that specific prejudice or harm will result if no protective order is granted. *Cedano v. Thrifty Payless, Inc.*, No. CV-10-237-HZ, 2011 U.S. Dist. LEXIS 155956, at *12-13 (D. Or. May 9, 2011) (citing *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (holding that broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Fed. R. Civ. P. 26(c)).

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CONCLUSION

For the reasons stated above, this Court should deny Corizon's motion for a protective order.

DATED: June 17, 2016

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